APPENDIX "A".

MOTION FOR REDUCTION OF SENTENCE.

Filed April 21, 1967.

Motion for Reduction of Sentence.

Comes now the defendant, John Burton Moody, within sixty (60) days from the denial of his petition for writ of certiorari to the Supreme Court of the United States, and moves the court to reduce the sentence pronounced upon him herein.

Lucius E. Burch, Jr.,
Lucius E. Burch, Jr.,
Attorney for Defendant,
128 North Court Avenue,
Memphis, Tennessee.

Burch, Porter & Johnson,
128 North Court Avenue,
Memphis, Tennessee,
Of Counsel.

Certificate of Service.

I, Lucius E. Burch, Jr., certify that copy of the foregoing motion for reduction of sentence was served upon Honorable Thomas L. Robinson, United States Attorney, Federal Office Building, Memphis, Tennessee, by placing same in the United States Mail, this the 20 day of April, 1967.

Lucius E. Burch Jr.

APPENDIX "B".

PRESENTENCE REPORT.

Filed May 12, 1967.

Probation Form 2

(Feb. 62)

United States District Court,
Western District of Tennessee,
Western Division.

Sept. 11, 1963

Presentence Report.

Name	**John B. Moody M. D.**	**Citizenship**	**U. S.**
Address	**525 Elm Avenue Dyersburg, Tennessee**	**Marital Status**	**Married**
		Number of Dependents	**One**
Age and date of Birth	**48 (DOB: 2-21-15)**	**Offense**	**Filing False and fraudulent income tax return**
Sex	**Male**		
Race	**White**	**Defense Counsel**	**Fred Eledge**

Offense:

On April 24, 1963, a four count indictment was returned for violation of Title 26, USCA, Section 6201, in that the defendant did, between 1957 and 1960, unlawfully and wilfully and knowingly attempt to defeat a large part of the income tax due and owing by him for the calendar years 1956, 1957, 1958 and 1959 by causing to be mailed in the Western Division of the Western District of Tennessee, false and fraudulent income tax returns to the District Director of Internal Revenue at Nashville, Tennessee.

Defendant's Statement of the Offense:

The defendant denies his guilt stating that he reported his income accurately and paid the correct amount of tax due to the Internal Revenue Department. He would not comment further other than to state that the Internal Revenue Department apparently had erroneous information concerning his income for his medical practice and that they did not understand his business situation.

Prior Record:

None know or admitted.

Reputation:

The defendant's reputation in his home community is quite questionable. It is commonly known and accepted that he dispenses narcotics to any and everyone who can pay for them. During the past decade he has been investigated by the Federal Narcotic Agents but they have never been able to make a case on him because he keeps records of the narcotics dispensed and defends himself on the basis of his patients requiring narcotics for medical needs. He is reported to be well known in the Mid-South for performing abortions at very reasonable rates. Although he is not allowed to practice surgery in the Parkview Hospital in Dyersburg, he is reported to perform these abortions in his office. The other doctors in Dyersburg will not handle his patients unless there is an emergency case of surgery which might be a matter of life and death. The defendant and his family are a very close family unit and are not active socially in the community. Subject is reported to be a popular doctor among the citizenry, especially the poor, because of his low rates for physical examinations and general medical treatment. He is also reported to

have wealthy and prominent patients who allegedly have a medical need for narcotics or the need of an abortionist. He is not supposed to have a set fee for abortions, preferring to charge according to the ability of the person desiring these services. He has been described as a doctor who is tolerated because he takes care of the needs of those who could not obtain or afford services which are not available by the other doctors in Dyersburg. The defendant's wife is considered a recluse since she is reported to be an alcoholic.

Family History:

Defendant—John B. Moody was born February 21, 1915, at Dyersburg, Tennessee, one of four sons born to Dr. Alexander and Mrs. Madie Tipton Moody. He married Mary McCullough in 1934 in Fulton, Kentucky, and they have three children.

Father—Dr. Alexander Moody died in 1949. He was a medical doctor.

Mother—Madie Tipton Moody died in 1949.

Brothers—Alexander Moody, Jr., age 54, resides in Dalton, Georgia and is a salesman.

Preston Moody, age 50, resides at Huntsville Alabama, employed as a salesman.

Joe Moody, M. D., age 38, resides at Houston, Texas, and is a medical doctor.

Wife—Mary McCullough Moody, age 45, resides with the defendant and is a housewife.

Sons—George Moody, age 21, married and resides with his parents, and is employed as a salesman.

James Moody, age 23, married, lives with his parents, employed as a refrigeration engineer.

John B. Moody, Jr., age 26, resides in Dyersburg, Tennessee, and is a farmer.

Home and Neighborhood:

The defendant together with his wife and two sons and their wives and children reside in the defendant's eight room brick and stucco home in an above average residential section of Dyersburg, Tennessee. The home is very comfortably furnished and two servants are employed for domestic duties. Subject has lived in Dyersburg most of his life with the exception of six years when he was attending medical school in Memphis, and two years when he practiced medicine at Canton, Mississippi.

Education:

The defendant graduated from the Dyersburg High School in 1933. He did his pre-med work at Memphis State University and then graduated from the University of Tennessee Medical School in Memphis in 1941.

Religion:

The defendant is a member of the First Baptist Church of Dyersburg, Tennessee, but admits he only attended church services occasionally, and was not active in church activities.

Interests and Activities:

The defendant denies being a member of any clubs or organizations, stating his leisure time was primarily occupied with fishing and hunting.

Health:

Subject has a fair complexion, brown eyes, brown hair, is 5'9" tall, weighs about 225 pounds, and is be-

lieved to be in good health. He related, however, that he suffers with his left foot which was burned severely by X-ray some years ago and that he may eventually have to have some toes amputated. He further related that when he was young he had meningitis which left him with weak eyes. In addition he claims to be suffering from hypertension. The defendant's wife has been in poor health for the past two years suffering with sclerosis of the liver. The defendant denies the use of narcotics and use of alcohol to excess. The defendant stated he did not practice surgery because it was too painful for him to stand on his feet for any substantial length of time.

Employment:

Upon graduating from the University of Tennessee Medical School subject worked for one year as a company doctor during the construction of the Arkabutler Dam. After one year he then became the company doctor for a lumber company at Canton, Mississippi between 1942 and 1944. Since 1944, Dr Moody has been in private practice in Dyersburg, Tennessee. In addition to his private practice he is a BMA and FAA examiner by giving physical examinations for persons referred by these organizations.

Resources:

Subject listed as assets his home on which he has a mortgage of $12,000; 25 acres of timber land—value unknown. In addition he listed a 1962 Buick on which he owes $2,300.00, and a 17 foot boat, as well as household furnishings and appliances. As to debts, in addition to a house and automobile, he claims to owe $6,000.00 for personal loans. He related he rents an office building for $100 per month. Subject was reluctant to go into his financial situation concerning

his checking account, savings account and denied that he had any stock and bonds of any significance.

Military History:

Subject stated he was deferred from military services and classified 4-F due to his weak eyes and hypertension.

Summary:

We have in this case a 48 year old white defendant, a native of Dyersburg, Tennessee, who is married and supporting his wife. He was born and raised in Dyersburg where he graduated from high school. He graduated from the University of Tennessee Medical School in 1941 and has practiced medicine in Dyersburg since 1944. He and his family are a close family unit preferring not to be active socially in the community.

The defendant has no prior criminal record but he has been under investigation considerably during the past decade for the alleged illegal dispensing of narcotics. In addition it is generally known that he is an abortionist. Although the defendant and his family do not give the appearance of wealth they do enjoy an above average standard of living.

With reference to the instant offense the defendant denies his guilt insisting that he prepared accurate income tax returns for the years in question.

It should be noted that the indictment charges that the defendant reported an adjusted gross income for the years 1956, 1957, 1958 and 1959 which totaled $10,363.40 and paid total income tax of $880.77. When, according to the Internal Revenue Department's investigation a very conservative estimate of adjusted gross income for these years totaled $33,793.13 with tax due in the amount of $7,428.22. Therefore, he

should have paid an extra $6,547.47 for the four years in question. Only in 1957 did the defendant report an adjusted gross income in excess of $3,000.00.

Although the defendant is reported to be very reasonable in his fees for his services it is a fact that his office is crowded with patients from morning to night every day of the week which should result in a substantial income.

Respectfully submitted,

Lloyd C. Wilson,
U. S. Probation Officer.

APPENDIX "C".

MEMORANDUM DECISION.

Filed May 15, 1967.

In the United States District Court for the
Western District of Tennessee,
Western Division.

United States of America,
v.
John Burton Moody.
} Criminal No. 9504.

Memorandum Decision.

Defendant is a physician practicing in Dyersburg, Tennessee. He was indicted for income tax fraud in four counts, covering the years 1956 through 1959, was convicted on all counts, and received an indeterminate sentence of five years under Title 18, U. S. C., Sec. 4208 (a) (2) and a fine of $10,000 was imposed. This conviction was reversed and a new trial ordered. On the second trial defendant was again convicted on all counts and again received an indeterminate sentence of five years under Title 18, U. S. C., Sec. 4208 (a) (2), but the fine imposed was $6000. This conviction was affirmed. These trial proceedings were all before Hon. Marion S. Boyd, now retired.

In the opinion affirming the second conviction our Court of Appeals said:

> "We, of course, do not have before us the probation report which was available to the United States

District Judge prior to sentence to ascertain whether or not a prior felony record justified the administration of the maximum concurrent sentences of imprisonment in this case. Absent such a record, it appears to us that sentences totaling less than half of the sentence actually imposed would satisfy the federal interest in the violation of its tax laws detailed herein. "In **United States v. West Coast News**, this court said:

> 'Upon a mandate going down on the affirmance of the conviction of these defendants, it will be within the power of the District Judge under Rule 35 of the Federal Rules of Criminal Procedure to reduce the prison sentences imposed. He can do this *sua sponte* without command from us or motion by defendants. Because of this, we need not now announce whether we consider that the District Judge abused his discretion in imposing the involved sentences, whether we consider that today's law permits us to change such sentences, or whether we consider that the sentences imposed by the District Judge offend the Eighth Amendment proscription of cruel and inhuman punishment. There will be time enough for us to further consider the matter should the District Judge conclude not to adopt our suggestion as to reduction of the sentences.' **United States v. West Coast News Company**, 357 F. 2d 855, 865 (C. A. 6, 1966)."

In the judgment of our Court of Appeals affirming the second conviction, issued as a mandate after certiorari had been denied by the Supreme Court, it is provided that ". . . the case is remanded to the District Court for its reconsideration of the prison sentence in the light of the opinion." Following the issuance of this mandate, defendant made a motion for reduction of sentence under

Rule 35, a hearing has been held thereon, after which the Court took the motion under advisement.

As stated, the sentence as imposed, under Sec. 4208 (a) (2), is an indeterminate sentence, a fact not expressly recognized in the opinion of the Court of Appeals. In any event, we know from experience that, such being the case, the length of time defendant will actually be incarcerated will depend little, if any, on the length of the sentence and that under this sentence, it is highly unlikely that defendant will serve more than eight months. It should also be pointed out that the proposed legislation for appellate review of sentencing does not, we understand, provide for review of indeterminate sentences, which amounts to a recognition of the correctness of what we have just said. It would also be appropriate to quote from the report of the proceedings of the Seminar and Institute on Disparity of Sentences held in 1961 for the judges of the Sixth, Seventh and Eighth Circuits, 30 F. R. D. at page 444:

> "Nevertheless, in the 'white collar' cases (embezzlement, tax evasion) particularly, there was strong sentiment for a 'taste' of imprisonment for such offenders both on the grounds of deterring others in similar occupations and to exhibit the 'seriousness' with which the courts viewed such violations. In the tax evasion case, for example, it was argued that proper tax reporting, affecting virtually every citizen, is a 'voluntary pact' essential to the nation and that unless violators are sentenced, the basis of the pact becomes weakened. The length of incarceration was viewed as not as important as the fact that some imprisonment is imposed. At the same time the view was expressed that mandatory prison sentences would be highly undesirable because there are cases where probation is a proper disposition. While there ought

> to be a presumption in favor of imprisonment, there was also agreement that each case should be considered on its merits with the ultimate discretion left to the court without congressional mandate. Roughly the same views were expressed in regard to the embezzlement case with imprisonment advocated primarily as a deterrent to others in similar occupations and to build general respect for the law by sternness displayed to 'white collar' violators. The extent to which there was agreement on these issues is doubtful, but there was a decrease in the number and percentages of judges selecting probation in both the tax evasion and embezzlement cases on the poll following the workshops (see Tables 1A and 5A)."

We would agree that, in the typical income tax case, "rehabilitation" is not necessary. It has been our experience, in fact, that a majority of such offenders have otherwise been good citizens, some of them even active *pro bono publico,* and it is obvious that the evader is highly unlikely to repeat even if he is placed on probation. However, the pre-sentence report in the instant case, which was filed at the hearing on this motion, shows that this defendant has, aside from these income tax fraud offenses, been in two respects somewhat less than an exemplary citizen. (We do not understand the Court of Appeals to mean, in its opinion, that only felony convictions can be considered in sentencing. If this were true, there would be no real reason to have a pre-sentence report.) We mention this only to point out that, in the instant case, rehabilitation deserves at least some consideration. Further, and more important, since we have a self-assessing income tax system, the Government depends on its citizens to honestly report their taxable income, and knowledge on the part of the public that offenders will, in addition to suffering other sanctions, have to serve at least some time will have a substantial deterrent effect on

others. We believe this deterrent effect to be a legitimate purpose in sentencing in this case.

We, therefore, conclude that, under all the circumstances, this motion to reduce the sentences should be denied. It is so Ordered.

Enter this 15th day of May, 1967.

Bailey Brown, Chief Judge.

APPENDIX "D".

United States Court of Appeals
For the Sixth Circuit.

United States of America,
Plaintiff-Appellee,
vs.
John Burton Moody, M. D.,
Defendant-Appellant.

No. 17,996.

ORDER.

(Filed Mar. 7, 1968.)

Before: Edwards, Celebrezze and Combs, Circuit Judges.

Appellant appeals from denial by the United States District Court for the Western District of Tennessee of a motion for reduction of sentence under Rule 35, Federal Rules of Criminal Procedure. In **United States v. Moody**, 339 F. 2d 161 (6th Cir. 1965), this Court reversed the Appellant's first conviction of tax fraud because of errors in the admission of evidence and in the instructions to the jury. Upon his second trial Appellant was again convicted and was sentenced to the maximum imprisonment of five years on each of four counts, the sentences to run concurrently. That conviction was affirmed by this Court, but the case was remanded to the District Court ". . . for its reconsideration of the prison sentences . . ." **United States v. Moody**, 371 F. 2d 688 (6th Cir. 1967).

Following the remand, the Appellant filed the instant motion under Rule 35. A hearing was held on the motion; and after reconsidering the sentences in the light of the presentence report and the previous opinion of this Court,

the District Court denied the motion. Appellant contends that in so doing the District Court abused its discretion; but on the facts in this record we do not find such abuse. Appellant further contends that his constitutional rights were violated because the Court had before it and did take into consideration statements contained in a pre-sentence report, in conformity with Rule 32 (c), Federal Rules of Criminal Procedure. Also, Appellant contends that the District Court's reliance upon the fact that sentencing was made under the provisions of 18 U. S. C., § 4208 (a) (2) and, therefore, the Parole Board could parole the Appellant at any time after imprisonment was an unconstitutional delegation of judicial authority. We find no merit to these contentions.

It is therefore Ordered that the judgment of the District Court be, and it is, hereby affirmed.

Entered by Order of the Court,
Carl W. Reuss,
Clerk.